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9 Attorney for The Biltmore Bank of Arizona

10
11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 In re:

Chapter 7 Proceedings

Case No. 2:09-bk-18416-CGC

15 STANLEY THOMAS LUND and
16 JUNE MARIE LUND, aka LUND
17 MORTGAGE,

18 Debtors.

19 THE BILTMORE BANK OF ARIZONA,

Adv. No. 2:09-ap-01577-CGC

20 Plaintiff,

**AMENDED RESPONSE TO MOTION FOR
UNILATERAL PRETRIAL STATEMENT**

21 vs.

22 STANLEY THOMAS LUND and
23 JUNE MARIE LUND,

24 Defendants/Debtors.

25 Plaintiff, The Biltmore Bank of Arizona, by and through undersigned counsel,
26 hereby responds to the Defendant's Motion to file a Unilateral Pretrial Statement.

27 On June 24, 2010, the Court conducted a hearing on Plaintiff's Motion for Partial
28 Summary Judgment. The Court took the matter under advisement. The Court also
continued a Rule 7016 Pre-trial Conference from August 4, 2010 to August 11, 2010, due

1 to counsel advising the Court he would be out of the country the week of August 2, 2010.
2 Counsel is checking e-mails and messages regularly while he is out of town, and there
3 were no calls as of 10:30 p.m., Europe time, August 4, 2010.
4

5 First, it frankly makes no sense to file a pre-trial statement until the Court rules on
6 the pending motion. Once a decision is rendered, the remaining issues to be considered at
7 a trial will be better determined. Second, if the Defendants' counsel wanted to send a
8 draft pretrial statement via email, undersigned counsel would have been more than happy
9 to assist in filing a *joint* statement - even while he was out of town.¹ Further, counsel
10 would have suggested it would be more efficient for the parties to agree to file a Joint Pre-
11 trial Statement shortly *after* the Court issues its ruling. One apparent phone call late in the
12 afternoon, followed by filing a unilateral statement within a few hours, is hardly the type
13 of acceptable communication this Court normally observes.
14
15

16 Accordingly, Plaintiff requests the Court direct that a Joint Pre-trial Statement be
17 filed within one week after the Court rules on the matter currently under advisement.
18

19 DATED this 5th day of August 2010.

20 MICHAEL W. CARMEL, LTD.

21
22 /s/Howard A. Singer (006971) for
23 Michael W. Carmel
24 80 East Columbus Avenue
25 Phoenix, Arizona 85012-2334
26 Attorney for Plaintiff
27

28 ¹ The Motion notes an attempt was made to contact undersigned counsel via phone. As of 9:30 a.m. MST August 5, 2010 the defendant's attorney has not left *any* voice message, nor has he spoken with the undersigned's secretary.

1 COPY of the foregoing e-mailed
2 on August 5, 2010 to:

3 Joseph W. Charles, Esq.
4 JOSEPH W. CHARLES, P.C.
5 5704 West Palmar Avenue
6 P.O. Box 1737
7 Glendale, Arizona 85311-1737
8 E-mail: LawOffice@joecharles.com
9 Attorneys for Defendants/Debtors

10 /s/ Nancy G. Forty
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